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No. 1067

In the Supreme Court of the United States

OCTOBER TERM, 1967

KNAPP BROTHERS SHOE MANUFACTURING CORPORATION,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Assistant Attorney General,
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Both petitioner, a manufacturing corporation, and the voting trust which holds title to all of petitioner's stock were organized for the purpose of benefiting New York University. Petitioner's certificate of incorporation provides that

> no part of its income or property shall inure to the private benefit of any stockholder, director, or officer, or any individual or corporation other than New York University. The directors shall from time to time distribute to New York University such part of the property and/or net income of the Foundation as they may determine and as may legally be distributable.

291-883—68

In the event of liquidation, petitioners' assets are to be distributed to the university. Upon termination of the voting trust, petitioner's stock is to be distributed to the university.

For the four taxable years ending on March 31, 1957, through 1960, petitioner claimed charitable deductions for amounts given to New York University. The Commissioner disallowed the deductions and asserted deficiencies on the ground that the "gifts" amounted to dividends paid to petitioner's sole shareholder.

In a resulting suit for refund, the district court ruled that New York University was not a shareholder of petitioner, and that petitioner therefore was entitled to a charitable deduction. The First Circuit, relying on its holding in *Crosby Valve & Gauge Co.* v. *Commissioner*, 380 F. 2d 146, certiorari denied, 389 U.S. 976, reversed, holding that New York University was in essentially the same position as a sole stockholder because it possessed "the real beneficial interest" in petitioner.

The result below is correct. There is no conflict or any other ground for further review in this case.

1. There is no merit to petitioner's suggestion (Pet. 13) that New York University's status was not that of a shareholder. As the court below pointed out (Pet. App. B 24–26), although legal title to petitioner's stock was held by the trustees of the voting trust and not New York University, the university was the only possessor of a beneficial interest in the stock; it was entitled to any and all distributions of petitioner's earnings or assets. No substantive dis-

tinction may be made, therefore, for tax purposes, between payments to it and payments to a sole shareholder.

2. Petitioner's contentions that the decision below challenges congressionally established patterns of charitable giving and is inconsistent with the congressional policy favoring charitable donations are essentially the same as those advanced in the recent petition for certiorari in *Crosby Valve, supra,* No. 633, this Term. For our answers to those contentions, we refer the Court to our memorandum in opposition in that case.[1]

3. The decision is not, as alleged (Pet. 7–8), in conflict with *Sico Foundation* v. *United States,* 295 F. 2d 924 (Ct. Cl.). *Sico* involved a Delaware nonstock corporation established for the "exclusive benefit of public schools in any state or states of the United States of America" (155 Ct. Cl. 554, 568). It was engaged mainly in selling and distributing petroleum products. During the years in controversy the corporation's bylaws provided that its earnings were payable in the discretion of the directors for the use of various State teacher colleges as scholarships. The court permitted the corporation to deduct contributions to such colleges, up to 5 percent of its net income. The government's argument, which the Court of Claims rejected, was that the money was given to students directly rather than to the tax-exempt colleges. The government apparently did make the contention involved in the present case—that such colleges are in the position

[1] Copies of that memorandum are being served on counsel for petitioner in this case.

of shareholders. There is in any event no discussion of the point in the *Sico* opinion so that there can be no conflict.

The circumstances of *Sico* are at the very least distinguishable from the present case. When a corporation is organized to aid, in the discretion of its directors, one or more of several charities, no one of the possible beneficiaries is entitled to receive any part of the earnings. Therefore, a decision that none of the charities in *Sico* was in the position of a beneficial owner of the corporation's stock would not necessarily have been inconsistent with the ruling below that a charity exclusively entitled to all of a corporation's assets and earnings is in substance the sole shareholder.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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